

Reissue of Patent : 6,263,879
Issued : 24 July 2001

REMARKS

STATUS OF CLAIMS

Claims 1-13 were issued in the parent patent, U.S. Patent No. 6,263,879, and remain pending herein. By way of this preliminary amendment, the Applicant has amended claims 1-13 to address certain minor matters of form, and also to change Claims 1, 6, 7, 9 and 11 with respect to one claim term. This preliminary amendment also adds new Claims 14-23. Accordingly, Claims 1-23 are now pending in the present reissue application.

This preliminary amendment is filed in a reissue application filed within 2 years of the issuance of the original patent date, 24 July 2001. Under 35 U.S.C. §251, claims in reissue applications filed within 2 years of original issuance are allowed to be broader in scope than those originally issued. Accordingly, any claims which are deemed broader scope presented in this preliminary amendment are proper for consideration during reissue under 35 U.S.C. §251.

CONCURRENT REEXAMINATION PROCEEDING

The parent patent to this reissue application, U.S. Patent No. 6,263,879, is currently undergoing a reexamination proceeding, Serial Number 90/006,090. Such reexamination was requested on 22 August 2001 and an Office Action in this reexamination proceeding was mailed on 28 May 2003. A response to this Office Action will be filed by the Applicant prior to the 28 July 2003 deadline, presenting the same amended claims as presented herein. With the filing of the above-captioned reissue application and the amendment and response in the reexamination proceeding, the same claims will then be pending in both matters. The Applicant respectfully requests that the Examiner consider merging these separate proceedings, or alternatively suspending one of them under 37 C.F.R. §1.565, whichever would be most appropriate.

SUPPORT FOR NEW CLAIMS UNDER 37 C.F.R. 1.173(C)

The Applicant has amended Claims 2-5, 8, 10 and 12-13 in order to clarify certain matters of form. In particular, the use of the word "presbyopic" has been corrected to "presbyopia" in each of these claims. These claims recite the same limitations as previously issued aside from this correction. It is therefore believed by the Applicant that no new matter has been added by these amendments to Claims 2-5, 8, 10 and 12-13, and that therefore no demonstration of support for the scope of these claims needs to be made under 37 C.F.R. §1.183(c).

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In addition, by the included preliminary amendment, the Applicant is amending Claims 1, 6, 7, 9 and 11. The amendments to these claims include the correction of "presbyopic" to "presbyopia" as described above for Claims 2-5, 8, 10 and 12-13. The amendments to Claims 6 and 7 also include the correction of simple typographical errors. In the amendments to Claims 1, 6, 7, 9 and 11 the word "cornea" or "corneal" has been amended to refer to the "eye" instead.

The amended Claims 1, 6, 7, 9 and 11 find support in the specification as originally filed. The specification includes discussion of the application of lasers to not only the cornea of the eye, but to the sclera of the eye as well. This can be seen at such locations in the specification as column 4, lines 51-55 and column 5, lines 28-29. Because such ablation is discussed with respect to both the cornea and the sclera of the eye, the Applicant believes that the use of the term "eye" rather than "cornea" is appropriately supported by the original specification of the issued patent.

Claim 1 has also been amended to recite ablating the sclera "to a depth of 80-90% of the thickness of the scleral tissue". This limitation finds support within the specification of the parent case as originally filed at column 4, lines 54-56, as well as other locations in the specification.

New Claims 14-23 have been added, resulting in a partial broadening of the scope of the claimed subject matter compared to the originally issued claims. The scope of these claims, as amended, encompasses subject matter which was previously disclosed but not claimed. The Applicant submits that no new matter is introduced by these claims.

All new dependent claims depend from new independent Claim 14. Claim 14 is fully supported by the various exemplary embodiments disclosed with reference to the figures and text of the specification. For instance, the Applicant would direct the Examiner to column 4, lines 54-55 of the '879 patent, and further at column 5, lines 3-8. Similarly, support for the remaining claims can be found in figures and specification of the original patent as filed for the remaining claims. For example: Claim 15 is supported by Figure 4A of the specification; Claim 16 is supported at column 4, lines 5-6; Claim 17 is supported at column 4, lines 19-20 of the patent; Claim 18 is supported at column 4, line 9; Claim 19 is supported at column 4, line 11; Claim 20 is supported at column 4, lines 10-11; Claim 21 is supported at column 4, lines 23-24; Claim 22 is supported at column 5, lines 7-8; and Claim 23 is supported at column 2, lines 64-65. Support for many of these limitations is also found in the originally filed claims of the '879 patent.

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Because all pending claims find support in the originally filed specification and therefore add no new matter to the reissue application, the Applicant submits that the claims as amended herein meet the requirements of 37 C.F.R. §1.183(c).

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CONCLUSION

Based on the foregoing, the Applicant submits that the present reissue application is in condition for examination on the merits. If any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: 24 July 2003

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